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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 CRAIG BRADLEY PEREAU,

12 Petitioner,

13 vs.

14 WILLIAM SULLIVAN, Warden,

15 Respondent.

CASE NO. 07CV1118 WQH (CAB)

ORDER ADOPTING REPORT AND
RECOMMENDATION

16 HAYES, Judge:

17 Pending before the Court is the Report and Recommendation of Magistrate Judge Cathy Ann
18 Bencivengo recommending that the Court deny Petitioner's Petition for Writ of Habeas Corpus. (Doc.
19 # 6).

20 **BACKGROUND**

21 On December 6, 2004, Petitioner Craig Bradley Pereau pled guilty in the California State
22 Superior Court to evading an officer with reckless driving, driving under the influence of alcohol,
23 driving with a measurable alcohol level higher than .08 percent, and resisting an officer. *Lodgment*
24 *# 1* at 8. On February 28, 2005, the California State Superior Court sentenced Petitioner to a total term
25 of seven (7) years. *Lodgment # 3* at 39-41.

26 On August 30, 2005, Petitioner filed an appeal in the California Court of Appeal. *Lodgment*
27 *7*. Among other things, Petitioner argued that his seven-year sentence constituted cruel and unusual
28 punishment in violation of the Eighth Amendment to the United States Constitution. *Lodgment # 9*.

1 On January 10, 2005, the California Court of Appeal affirmed Petitioner's sentence. *Lodgment # 7*.
 2 On February 16, 2006, Petitioner filed a Petition for Review in the California Supreme Court, and on
 3 March 22, 2006, the California Supreme Court denied review. *Lodgment # 9*.

4 On June 20, 2007, Petitioner filed the presently pending Petition for Writ of Habeas Corpus
 5 pursuant to 28 U.S.C. § 2254. (Doc. # 1). On August 17, 2007, Respondent filed an answer. (Doc.
 6 # 5). On June 17, 2008, the Magistrate Judge issued a Report and Recommendation recommending
 7 that the Court deny the Petition on the merits. (Doc. # 6). No party has filed objections to the Report
 8 and Recommendation.

9 STANDARD OF REVIEW

10 The duties of the district court in connection with a Magistrate Judge's Report and
 11 Recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C.
 12 § 636(b)(1). Where the parties object to a Report and Recommendation, "[a] judge of the [district]
 13 court shall make a de novo determination of those portions of the [Report and Recommendation] to
 14 which objection is made." 28 U.S.C.A. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).
 15 When no objections are filed, the district court need not review de novo the Report and
 16 Recommendation. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005); *United States v.*
 17 *Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may always, "accept,
 18 reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."
 19 28 U.S.C. § 636(b)(1); *Wilkins v. Ramirez*, 455 F. Supp. 2d 1080, 1088 (S.D. Cal. 2006); *Or. Natural*
 20 *Desert Ass'n v. Rasmussen*, 451 F. Supp. 2d. 1202, 1205 (D. Or. 2006).

21 DISCUSSION & ORDER

22 Petitioner seeks habeas relief on the sole ground that the seven-year sentence imposed upon
 23 him by the California State Superior Court violated his constitutional right to be free from cruel and
 24 unusual punishment. Petitioner contends that the sentence was disproportionate to the crimes
 25 committed, and that the sentence was cruel and unusual in light of Petitioner's impaired mental
 26 abilities.

27 The Magistrate Judge concluded that the sentence imposed by the California State Superior
 28 Court was not cruel and unusual in light of the fact that Petitioner pled guilty to four crimes and had

1 served prior prison terms. The Magistrate Judge further concluded that the decision of the California
2 Court of Appeal affirming the sentence of the California State Superior Court was not contrary to, or
3 an unreasonable application of, clearly established federal law. Petitioner did not file objections to
4 the Report and Recommendation.

5 After de novo review of Petitioner's Petition for Writ of Habeas Corpus, the opinion of the
6 California Court of Appeals, and the record in this case, the Court concludes that the Magistrate Judge
7 correctly determined that the opinion of the California Court of Appeal was not contrary to, or an
8 unreasonable application of, clearly established law. Petitioner pled guilty to four crimes on
9 December 6, 2004, and the record establishes that Petitioner had been engaged in significant criminal
10 conduct prior to that date. The Court concludes that Petitioner has not established either that his
11 seven-year sentence is disproportional to the crimes he pled guilty to, or that the sentence is cruel and
12 unusual in light of his mental impairments. Accordingly, the Court concludes that the opinion of the
13 California Court of Appeal affirming Petitioner's sentence was not contrary to, or an unreasonable
14 application of, clearly established law. 28 U.S.C. § 2254(d).

15 **CONCLUSION**

16 The Report and Recommendation (Doc. # 6) is hereby ADOPTED in its entirety. In addition,
17 Petitioner's Petition for Writ of Habeas Corpus (Doc. # 1) is DENIED with prejudice. The Clerk of
18 the Court is Ordered to close this case.

19 **IT IS SO ORDERED.**

20 DATED: July 23, 2008

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22 **WILLIAM Q. HAYES**
23 United States District Judge
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